

DOCKET FILE COPY ORIGINAL

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN 11 1996

FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)
)
Amendment of Parts 2 and 90 of the) PR Docket No. 89-553
Commission's Rule to Provide for the)
Use of 200 Channels Outside the)
Designated Filing Areas in the)
896-901 MHz and the 935-940 MHz Bands)
Allotted to the Specialized Mobile Radio Pool)
)
Implementation of Section 309(j))
of the Communications Act -) PP Docket No. 93-253
Competitive Bidding)
)
Implementation of Sections 3(n) and 322)
of the Communications Act) GN Docket No. 93-252
To: The Commission

**REQUEST TO ACCEPT LATE-FILED
COMMENTS ON PETITION FOR RECONSIDERATION**

RAM Mobile Data USA Limited Partnership ("RMD"), by its attorneys, hereby requests the Commission accept the following late-filed comments¹ on a Petition for Reconsideration filed on October 19, 1995, by CELSMER to the Commission's Second Order on Reconsideration and Seventh Report and Order in the above captioned proceeding (the "900 MHz Order")², with respect to the area in which incumbent 900 MHz SMR licensees will be permitted to modify their facilities.³ As set forth below, RMD is submitting these Comments at this time because of new information, specifically the Commission's just available release of its 800 MHz SMR rules, that will give greater flexibility of operation to incumbent 800 MHz SMR systems under exactly the same circumstances that such flexibility has been denied to existing 900 MHz SMR licensees.

¹ In the alternative, RMD requests that this pleading be treated as a supplement to its still pending Emergency Petition for Reconsideration and/or Waiver of Activity Rules, filed September 21, 1995, in this docket.

² PR Docket No. 89-553, et al., 78 R.R. 2d 1641 (Sept. 14, 1995).

³ CELSMER urged that the area defined by an incumbent's 40 dBu contours is too limited for operational flexibility and suggests, as a compromise, that a 32 dBu contours be employed.

The issue is clear and simple, a matter of parity for competitive services, a matter of equal treatment in equal circumstances. In the 900 MHz Order, the Commission refused to allow incumbent licensees the operational flexibility to modify their facilities, as long as they did not extend their 22 dBu interference contours. Despite undisputed engineering showings that such flexibility is necessary to allow existing systems to cover "dead spots" in their service without increasing interference to MTA licensees, the Commission held that the more restrictive 40 dBu contours should be employed for this purpose.⁴ Yet, responding to the exact same circumstances, the Commission has now determined to allow existing 800 MHz systems to modify their coverage to cover dead spots in their service areas as long as their 22 dBu contours are not expanded, "because we believe it will give incumbents more operational flexibility without impacting the EA licensee's ability to build a wide area system in the same market."⁵

While throughout the 800 MHz Order comparisons are made between the rules for 800 MHz service and 900 MHz service, no explanation for this disparate treatment is offered nor, in RMD's judgment, could any reasonable basis for such a difference in treatment be given. The technical issues are exactly the same; the need to fill in coverage is exactly the same; the effects (or lack thereof) on new MTA or EA licensees of allowing existing systems the ability to modify their systems as long as their interference contours are not extended are exactly the same as well.

Long before in this docket the Commission concluded that it is required under the 1993 Budget Act⁶ to ensure that the "rules governing actually or potentially competitive services" be conformed if "the differences distort competition by placing unequal regulatory burdens on different classes of CMRS providers."⁷ While the Commission allowed itself some room for exception where the cost of conforming historically different rules might outweigh the

⁴ 900 MHz Order, *supra*, 78 R.R.2d at 1653-1654.

⁵ First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, FCC 95-501, stated as released December 15, 1995 (the "800 MHz Order"), at ¶ 86. EA or Economic Analysis Economic Areas licensees will be, for 800 MHz, the functional equivalent of MTA licensees in the 900 MHz service.

⁶ Omnibus Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312, 392 (1993).

⁷ Third Report and Order, FCC 94-212, 9 FCC Rcd. 7988, 7997 (1994).

benefits of regulatory parity, no such historical justification can exist for decisions issued just four months apart.

Unless the rules are changed, existing 900 MHz systems will suffer the added, serious, and unnecessary competitive handicap of not being able to make simple modifications in their facilities to meet customer requirements even when there is no increase in interference contours and even when existing 800 MHz SMR have been granted this important operational flexibility. RMD urges that this additional restriction on the ability of 900 MHz SMR operators to provide service to their customers in their service areas is in contrary to the principles of regulatory parity, the public interest in the availability of competitive quality service, and simple fairness.

For the reasons set forth above, RMD urges the Commission to give the same operational flexibility to 900 MHz SMR incumbents as the Commission has granted to 800 MHz SMR incumbents -- the ability to modify facilities as long as existing 22 dBu interferences contours are not extended.

Respectfully submitted,

RAM MOBILE DATA USA LIMITED PARTNERSHIP

By: /s/ Jonathan Wiener
Henry Goldberg
Jonathan Wiener

GOLDBERG, GODLES, WIENER & WRIGHT
1229 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 429-4900

Its Attorneys

January 11, 1996

CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing Comments on Petitions for Reconsideration was sent by U.S. mail, postage prepaid, this 11th day of January, 1996, to each of the following:

* David Furth
Acting Chief, Commercial Wireless Division
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554

* Rosalind Allen
Associate Bureau Chief, WTB
Federal Communications Commission
2025 M Street, N.W., Room 7002-B
Washington, D.C. 20554

Russell H. Fox
Gardner, Carton & Douglas
1301 K Street NW Suite 900 East Tower
Washington, DC 20005
Counsel to PCI

David J. Kaufman, Esq.
Loretta K. Tobin
Brown Nietert & Kaufman, Chartered
1920 N Street, N.W., Suite 660
Washington, D.C. 20036
Counsel for CELSMER



/s/Dawn Hottinger

Dawn Hottinger

* By Hand